Editor's note: Appealed – voluntarily dismissed, Civ.No. 78-258 (D.Nev. Dec. 7, 1978)

PAUL KELLERBLOCK

IBLA 78-174 Decided December 5, 1978

Appeal from a decision of the Nevada State Office, Bureau of Land Management, setting forth the appraised values of the offered and selected lands in a proposed land exchange under authority of the Federal Land Policy and Management Act of 1976. N 7547.

Affirmed.

1. Exchanges of Land: Generally--Private Exchanges: Generally--Federal Land Policy and Management Act of 1976: Exchanges

   The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

2. Private Exchanges: Generally

   Prior to issuance of a patent, an exchange application is nothing more than a proposal under which no contract right arises and no equitable title vests.

APPEARANCES: Wallace L. Duncan, Esq., Philip L. Chabot, Jr. Esq., Duncan, Brown, Weinberg and Palmer, P.C., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Following review of an informal proposal from Paul Kellerblock of a land exchange, the Acting Forest Supervisor, Toiyabe National Forest, advised him by letter dated May 3, 1973, that the exchange appeared feasible and would benefit "Federal Resource Programs."

On May 7, 1973, Kellerblock filed in the Nevada State Office, Bureau of Land Management, exchange application N 7547, pursuant to section 8 of the Taylor Grazing Act, 43 U.S.C. § 315g (b) and (d) (1970), offering 197.83 acres in the SE 1/4 sec. 25, NW 1/4 NE 1/4 sec. 36, T. 18 S., R. 56 E., Mount Diablo meridian, Clark County, Nevada (Appendix A), in lieu of a total of 67.5 acres in 17 parcels of public domain land in secs. 10 and 13, T. 21 S., R. 60 E., and sec. 19, T. 21 N., R. 61 E., Mount Diablo meridian, Clark County, Nevada (Appendix B). The land owned by Kellerblock is primarily timber land adjoining the Toiyabe National Forest, while the selected lands lie from 2 to 3 miles southwest from the city limits of Las Vegas. At the request of the Forest Service, BLM had classified the selected lands as suitable for disposal by exchange, N 6960.

The Forest Service appraisal report (used as a basis for the feasibility report) was rejected by the BLM reviewing appraiser for technical inadequacies. The Director, Denver Service Center, BLM, advised the Nevada State Director that the appraisal "subtly favored the private landowner, perhaps in an unconscious effort to facilitate the exchange." New appraisals were directed. By a letter dated January 30, 1975, the Nevada State Director suggested to the Forest Service that an independent fee appraiser be retained to appraise the lands involved in the proposed exchange. Such independent appraisals were commissioned by the Forest Service in early 1975, but the appraisers failed to submit their valuations until several months after the time called for in their contracts had passed and, by appellant's own admission, "by the time the appraisals were finally received by BLM, the values were no longer applicable." Subsequently, in October 1976, a private appraisal (the Esplin appraisal) of both the offered and the selected lands was completed and approved by BLM. An updated reappraisal by Esplin was similarly approved by BLM on November 25, 1977. It is interesting to note that in each appraisal other than the initial study by the Forest Service, the selected lands were shown to have a much higher value than the offered lands.

The Federal Land Policy and Management Act of 1976 (FLPMA) was enacted October 21, 1976, 90 Stat. 2743, 43 U.S.C. § 1701 et seq. Among other things, the Act, in section 705, repealed the exchange provisions in the Taylor Grazing Act, and in section 206, provided that exchanges might be made to serve the public interest, but that the values of the lands exchanged either shall be equal in value, or if not equal, the values shall be equalized by payment of money, not to exceed 25 percent of the total value of the lands transferred out of Federal ownership, with a mandate to keep the amount of money payment as small an amount as possible.

Kellerblock was advised, throughout the period of the appraisal studies, of the problems attendant upon his application. By letter of September 19, 1977, the Assistant Secretary (Land and Water Resources) advised Kellerblock of the responsibility of BLM and the Department of the Interior to determine the values of lands involved in exchange proposals, and to approve or deny the exchange; that the Forest Service is involved only from its desire to obtain the offered land; that land appraisals are not static, but must be reviewed and revised in accordance with (Interior) Department policy and consistent with professional standards to reflect current market valuation; and that Kellerblock should consider his priority of the several parcels of selected land and be prepared to amend his application by elimination of the least desirable tracts so as to equalize the values between the offered and the selected lands.

By decision of December 9, 1977, based on the Esplin appraisal values, the Nevada State Office stated that exchange application N 7547 was being processed pursuant to the provisions of section 206, FLPMA, because section 8 of the Taylor Grazing Act has been repealed by FLPMA; that the appraisal value of the offered lands, as of November 25, 1977, was $320,000, and that Kellerblock should elect which of the 17 parcels of selected land (the appraised value of each was given) he desired within the value of the offered land (or by equalizing cash payment of not to exceed 25 percent of the value of the lands selected). This appeal followed.

The appeal, after reciting a miscellany of actions by the Forest Service prior to the time of filing of the application N 7547 on May 7, 1973, and a resume of the interagency discussions relative to the appraisals, states as its principal basis that the appraisals do not properly reflect the value of either the offered or the selected lands and that the appraisals are not in accordance with BLM standards and procedures or standard appraisal criteria; some 30 particular objections to the Esplin appraisal are made. The appeal argues that the Administrative Procedures Act, 5 U.S.C. § 552(a)(1) requires an agency to publish its procedures and rules and that the BLM regulations governing exchanges, as published in 43 CFR Part 2200 et seq., do not adequately apprise appellant of the standards and procedures which BLM followed in this case, thereby depriving him of opportunity to proceed with the proposed exchange in an informed manner, and that 5 U.S.C. § 553 requires promulgation of appraisal standards and criteria which BLM has not done, and that BLM has not provided opportunity for public participation in rulemaking relative to exchanges as provided by FLPMA at section 102(a)(5). Further it is contended that BLM arbitrarily and capriciously rejected the Forest Service appraisals, that delay by BLM to accept the exchange has deprived appellant of the best and most effective use of his lands from 1972 to date, with lack of compensation for use of the lands by the Forest Service following appellant's acceptance of the Government's offer of May 15, 1972.

Having examined appellant's particular criticisms, we conclude that most of the complaints are insubstantial in the extreme, dealing with instances in which Esplin allegedly verified sales prices of various tracts through means other than direct contact with parties to the sale. Such means include information received from realtors, County tax assessor, etc. We find that the only complaint of substance which appellant puts forward is his contention that the appraisals "do not adequately take into account the distinction between retail and wholesale purchase," an objection which is answered by the differing character of the lands in question.

This distinction between wholesale and retail valuation is, we conclude, related to appellant's complaint that the Esplin appraisal lists values for the selected lands which are far in excess of the 1972 values, while it lists values for the Kellerblock parcel which are only moderately in excess of the values assigned it in the 1972 appraisal. The disparity reflects simple market forces at work in that the selected lands are in an area which has become increasingly developed as the city of Las Vegas in recent years has grown toward and around it. Subdivision expansion coupled with residential and commercial construction has created a brisk, present market for retail land sales as single lots find single purchasers at an accelerating rate. The offered lands, in contrast, lie in an area where real estate activity has been relatively slow, indeed, virtually dormant. As the Esplin appraisal of October 15, 1976, notes:

> Rural recreational homesite raw land is rather static, and few sales have occurred. Only one recent sale was found. The remainder of the sales go back as far as 1969. Other older sales were found, but were not used because of the difficulty in making a time adjustment. It is the opinion of realtors and others contacted that rural recreational land is lacking in demand at the present time, and while these lands have increased in value, the rate of increase would not be overall as great as that shown above near Las Vegas.

[1] The only characteristic which the offered and selected tracts have in common is the fact that they are both composed of raw, undeveloped land which is not presently income producing land. Under the Uniform Appraisal Standards for Federal Land Acquisitions both tracts must, therefore, be appraised by a "comparable sales" or "market data" approach to valuation. 1/ In the case of the offered tract, comparable

---

1/ The Interagency Land Acquisition Conference Committee on Uniform Appraisal Standards had developed and published "Uniform Appraisal Standards for Federal Land Acquisitions" for the expressed purpose of obtaining uniformity among the various agencies acquiring property on

sales were largely a "wholesale" sort of transaction, while comparable sales in the immediate neighborhood of the selected parcels were more of a retail or single lot character. Thus, while the "highest and best use" projected for the Kellerblock tract is development into rural homesites, no instances of neighboring single lot or retail type sales are noted in the appraisals nor are any cited by appellant. As the appraisal concludes, "this property can be developed into rural homesites, and the highest and best use is for speculative investment for this purpose." The Esplin appraisal thus correctly utilizes a market data valuation involving the purchase and sale of comparable large tracts of land nearer Las Vegas, and this approach, being in this instance tied to large tract sale comparisons, is necessarily more of a "wholesale" approach to valuation. We find no fault in this method or in the fact that it has not resulted in a reappraised value for the offered lands corresponding to the sharp upsurge in the value of the selected parcels. As set forth above, we find that this disparity is the result of a retail demand forcing the selected lands values toward a sort of economic maturation, while the highest use of the offered lands remains a subject for wholesale speculation. We find no fault in this approach to valuation and, indeed, we view it as the minimum protection upon which BLM must insist if it is to carry forward the directive of section 102(a)(9) of the Federal Land Policy and Management Act of 1976, supra, that "the United States receive fair market value for the use of the public lands and their resources unless otherwise provided by statute."

Appellant contends on appeal that "to the extent that the Bureau has promulgated appraisal standards and criteria, such standards and criteria have not been adopted and promulgated as required by 5 U.S.C. § 553 (1976)." We find appellant's position totally unfounded. In the first place, the standards which the Bureau uses are those adopted by the Interagency Land Acquisition Conference, entitled "Uniform Appraisal Standards for Federal Land Acquisitions," which in turn were developed in consultation with organizations such as the American Society of Appraisers, the Society of Real Estate Appraisers, etc. Inasmuch as this document is published by the Government Printing Office, from which any member of the public can readily obtain a copy, we find it impossible to place any credence in appellants contention that he has effectively been deprived of any opportunity to comment on the appraisals which have been made.

---

fn. 1 (continued)
behalf of the United States. The appraisal standards developed are equally applicable to those bureaus that dispose of property on behalf of the United States. The 1973 publication (published by the Interagency Land Acquisition Conference, printed by GPO, and available from the Superintendent of Documents) has been accepted by the Department as a handbook of the Departmental Manual and its standards are to be used as a guide by all bureaus and offices. Departmental Manual, 602.1.3.

Moreover, the regulations clearly provide that "the fair market value of the property conveyed to the United States in any exchange shall not be less than the fair market value of the U.S. property exchanged therefor." 43 CFR 2203.2. It is not the appraisal method which is of particular importance, but whether the method utilized accurately arrives at the fair market value of both the offered lands and the selected lands. As this Board noted in Western Slope Gas Co., 21 IBLA 119 (1975), "it is the duty of the appellant to show by clear and precise evidence that a value determination of the State Office is in error" (Emphasis supplied).
21 IBLA at 122. Appellant herein has seen fit to concentrate, for the most part, on showing that the appraisers in various trivial ways failed to scrupulously follow BLM appraisal guidelines. 2/ Appellant has not, however, provided any information which would indicate that the results achieved are erroneous. 3/ The Secretary of the Interior has a right to rely on the expertise of the Department's experts, and absent a showing of clear error in the results reached, their findings will not be disturbed. Western Slope Gas Co., supra; cf. Exxon Company, U.S.A., 15 IBLA 345, 355 (1974). We note, parenthetically, that this reliance is no different from that which appellant is free to repose in the conclusions of his own experts. Appellant's procedural contentions are thus without merit. See, Air Line Pilots Ass'n Internat'l v. C.A.B., 215 F.2d 122 (2d Cir. 1954).

By a supplementary pleading styled "Protest," filed September 14, 1978, appellant's counsel states that:

> Mr. Kellerblock may not have a right to insist upon an exchange in the first instance, but he does have the right to insist that in his dealings with the Bureau of Land

---

2/ As an example, appellant complains that the BLM appraiser failed to verify accurately the comparable sales used to valuate the selected lands. But appellant fails to show that in even one instance the valuation of a comparable sale used by the BLM appraiser was erroneous. It is to our minds functionally irrelevant that specific BLM guidelines be followed so long as the end result is not shown to be an inaccurate valuation of fair market value, under the Uniform Appraisal Standards; just as we would not hesitate to reverse an appraisal where it was clearly shown that the results were inaccurate, even though the technical guidelines had been scrupulously followed.
3/ It is instructive to point out that appellant has not submitted his own appraisal. Rather, appellant requested his appraiser to limit his review of the BLM appraisal reports "for compliance of the appraisal reports with the outline format used by the Bureau of Land Management for property valuation." Amended Statement of Reasons for Appeal, Exhibit 22 at 1. Indeed, the appraiser specifically noted: "No attempt was made to argue value conclusions of the [BLM] appraiser." Id. at 11.

> Management, the agency comply with the Administrative Procedure Act, the Constitution of the United States, and other applicable legal principles.

We find no fault with the foregoing statement, but we disagree with various of the conclusions which counsel infers from these principles.

Counsel appears to argue that, if BLM, in a specific appraisal or by its general appraisal procedures, has violated some mandate of the APA, this violation vests Kellerblock with a cognizable, legal right to an exchange of lands under terms other than those which BLM sees fit to accept. Counsel argues that this Board should either 1) order an exchange on the basis of the initial Forest Service appraisal of 1971, or 2) order BLM to make a new appraisal in harmony with appellant's procedural and substantive contentions, and direct BLM to offer Kellerblock an option to select from the lands he desires on the basis of this new appraisal. We conclude, however, that even if we were to concede for the sake of argument, that appellant's objections to the Esplin appraisal herein appealed were correct, this finding of error would merely invalidate the proposal below, and no presently existing legal authority would suffice to order BLM to consummate an exchange. BLM is under no obligation either to acquire appellant's lands or to tender the selected lands for sale or exchange to anyone ever.

The situation before us is thus clearly unrelated to the principles enumerated in Drake's Bay Land Company v. United States, 424 F.2d 574 (Ct. Cl. 1970), relied upon by appellant, wherein a land developer brought an inverse condemnation action to compel compensation for the taking of lands included within the boundaries of Point Reyes National Seashore Area. In that case, plaintiff developer's lands were rendered virtually unsaleable, since their inclusion in the seashore area guaranteed that the lands would, sooner or later, be acquired by the Government, and, furthermore, subjected the lands to eventual acquisition by condemnation. No Congressional or other official mandate exists in the case before us directing BLM to acquire appellant's land, and absent appellant's consent, no such acquisition could take place.

[2] Appellant argues, finally, that the decision below breaches an "implied contract to exchange" for which he is entitled to compensation. Appellant maintains, in this connection, that BLM has interfered with his use and enjoyment of the offered lands by "delaying the culmination of appellant's offer to exchange." The answer to this contention is simple enough. Appellant was free, at any time here relevant, to take the offered land and do with it anything he pleased. No lien, encumbrance, or restriction of any sort rose to affect his realty by virtue of his pending offer to exchange lands and he remained free at all times to seek private purchasers or pursue any sort of development plans. As we held in Siesta Investments, Inc., 28 IBLA 118 (1976), "Prior to issuance of a patent an exchange application is nothing more than a proposal under which no contract right

arises and no equitable title vests." This analysis applies to both parties to the exchange and, therefore, we observe that the exchange application created no rights in the United States respecting appellant's land.

The applicable regulation, 43 CFR 2204.2-3, clearly states that: "prior to the issuance of patent, no action taken shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States." If appellant failed to use his land throughout this period, this was an election on his part. His free choice not to utilize the offered lands, in the face of the clear admonition of the regulation, cannot be metamorphosed into a loss incurred by the failure of the United States to consummate the desired exchange. 4/ Appellant is thus entitled neither to compensation for any alleged "taking" nor to the subject public lands by virtue of any theory of entitlement arising from his application. As we held in Siesta, supra, "It is entirely within the discretion of the Director, BLM, to reject the exchange application where it is determined that the public interest is no longer served by the exchange." In light of this holding, it is difficult to see how BLM might legally be compelled to offer appellant an exchange on terms more favorable than those set forth in the decision below. 5/ See Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964); Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963), cert. denied, 373 U.S. 932 (1963); and Jack H. Stockstill, 1 IBLA 278 (1971).

Appellant's "protest" of September 14, 1978, supra, is accompanied by various documents and exhibits styled "Affidavit of Paul Kellerblock." These documents recite the argument that, "[b]y actively deferring action on the exchange, the government obtained and continues to enjoy a valuable scenic easement, an easement obtained without

---

4/ In this regard, we wish to point out that we doubt that appellant would be arguing binding contractual obligations if the land situation were reversed, i.e., the offered lands had undergone a rapid price appreciation while at the same time the original value of the selected lands had remained relatively static. Similarly, were the proposed land exchange a matter of negotiations between two private parties, appellant would scarcely complain of his right to the exchange. In actual fact, however, appellant has no right to an exchange, and the government is in precisely the same position as a private party. It has the right to consummate the exchange or reject it, as it sees fit.

5/ We would also point out that the regulations provide that after publication of a notice of the proposed exchange, which is itself premised on a finding that the exchange is consistent with the law and regulations and in the public interest, "changes in value * * * will ordinarily not be a basis for rejection of an application, all other factors being equal."
43 CFR 2204.2-2. Needless to say, no publication occurred in the instant case.

recourse to the usual machinery of land acquisition" (citing Drake's Bay, supra). Given the fact that, at all relevant times, appellant could have developed the land in question or used it for even the most noxious purposes without creating any cause of action in the Federal Government, we have difficulty understanding what sort of "valuable scenic easement" has come to repose with the Government. Appellant argues that "the government succeeded in obtaining, albeit without the aid of statute, rule or order, but obtaining nonetheless, the result held unlawful in Beneson and Drake's Bay." (Emphasis in original.) These authorities are quite inapposite, since, as outlined, supra, nothing of value has been taken from appellant or given to the Government, this in sharp contrast to the facts of Drake's Bay, supra, and to the situation in Beneson where the Government effectively barred the aggrieved landowner from making any profitable use of the disputed premises by a series of actions culminating in the issuance of a court order enjoining that landowner from demolishing a dilapidated and unusable structure which basically comprised the disputed premises.

We point out that if appellant still desires to make an exchange based on the lands herein offered, a new, current appraisal will be required for both the offered and the selected lands. If the disparity in value persists, appellant will again be called upon to make an election of such selected land parcels as will be compatible with the equal value provisions in FLPMA.

We deny appellant's motion for hearing, motion for expedited consideration, motion for conference, and motion for discovery procedures and an order for interrogatories, as we can see no meaningful purpose in any of the motions, especially in light of our discussions, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Douglas E. Henriques
Administrative Judge

I concur:

_____
Frederick Fishman
Administrative Judge

APPENDIX A

Offered Land.

T. 18 S., R. 56 E., Mount Diablo meridian, Clark County, Nevada.

Section 25: SE 1/4

Section 36: NW 1/4 NE 1/4

Excepting therefrom the following described property: Situated in Section 25, T. 18 S., R. 56 E., Mount Diablo meridian and more particularly described as follows: Commencing at a stone monument at the 1/4 corner between Sections 25 and 36, T. 18 S., R. 56 E., thence along the quarter line north 0 degrees 33' west 500 feet to the true point of beginning of the herein described block of land; thence north 0 degrees 33' west 200 feet along the quarter line to a point which is south 0 degrees 33' east 38 feet from an angle in Champion Road; thence north 89 degrees 27' east 200 feet to a point; then south 0 degrees 33' east 200 feet to a point; thence 89 degrees 27' west 200 feet to a place of beginning. Further excepting the S 1/2 SE 1/4 SE 1/4 NW 1/4 NE 1/4 of Section 36, T. 18 S., R. 56 E., Mount Diablo meridian. The offered land contains 197.83+/- acres.

Appraised value November 25, 1977 -- $320,000.

APPENDIX B

Selected Land	Appraised Value
T. 21 S., R. 61 E., Mount Diablo base line and meridian.	Nov. 25, 1977
Parcel No. 1 - Section 19: SE 1/4 SW 1/4 NE 1/4 NW 1/4 SW 1/4 SE 1/4 NE 1/4 NW 1/4	$100,000
T. 21 S., R. 60 E., Mount Diablo base line and meridian.	
Parcel No. 2 - Section 13: NE 1/4 NW 1/4 NW 1/4 NW 1/4	87,500
Parcel No. 3 - SW 1/4 SW 1/4 NW 1/4 NW 1/4	215,000
Parcel No. 4 - NE 1/4 NW 1/4 NE 1/4 SW 1/4	30,000
Parcel No. 5 - NW 1/4 SW 1/4 NW 1/4 SW 1/4	80,000
Parcel No. 6 - SW 1/4 SW 1/4 SW 1/4 SW 1/4	160,000
Parcel No. 7 - SE 1/4 SW 1/4 SE 1/4 SW 1/4	45,000
Parcel No. 8 - NE 1/4 SE 1/4 SE 1/4 NE 1/4	67,500
Parcel No. 9 - NW 1/4 NW 1/4 SE 1/4 NE 1/4	90,000
Parcel No. 10 - SE 1/4 SW 1/4 NE 1/4 NE 1/4	105,000
Parcel No. 11 - SW 1/4 SE 1/4 NW 1/4 NE 1/4	105,000
Parcel No. 12 - Section 10: E 1/2 NE 1/4 NE 1/4 NW 1/4	150,000
Parcel No. 13 - E 1/2 NE 1/4 NW 1/4 SW 1/4	75,000
Parcel No. 14 - E 1/2 SE 1/4 NE 1/4 SE 1/4	150,000
Parcel No. 15 - W 1/2 SW 1/4 SE 1/4 NE 1/4	144,000
Parcel No. 16 - E 1/2 NE 1/4 SE 1/4 NE 1/4	150,000
Parcel No. 17 - W 1/2 NE 1/4 NE 1/4 NE 1/4	188,500

ADMINISTRATIVE JUDGE BURSKI CONCURRING SPECIALLY:

Though I find myself in complete agreement with the disposition of the appeal by the majority, I feel that some matters raised by appellant are worthy of further elaboration.

What is clear from a reading of appellant's submissions on appeal is a contention that somehow, because of actions by BLM employees, he has acquired a right to the consummation of a private exchange of Federal land for that which he owns, on terms which he will unilaterally set. He is, in effect, attempting to invoke the doctrine of laches, though for good reasons he does not name it so. Not only is there a general rule that laches is not applied against the Government, but intrinsic to the invocation of the rule is the requirement that a change of position occur as a result of reliance which one party had a right to place in the false representations of another. An examination of the factual milieu of the instant appeal discloses: 1) no change in position; 2) no reliance in any representation in which appellant had a right to rely; and 3) no false representation of any kind.

First, appellant argues that, but for the pendency of the exchange application, he would have begun development of his offered lands. If appellant failed to use his land throughout this period, this was an election on his part. The applicable regulation, 43 CFR 2204.2-3, clearly provides that "prior to the issuance of patent, no action taken shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States." There was no legal bar to appellant's withdrawal of his application until issuance of the patent. His free choice not to utilize the offered lands, in the face of the explicit admonition of the regulation, cannot be metamorphosed into a loss incurred by the failure of the United States to consummate an exchange which he desired. 1/

Second, appellant points to no false statements or representations made by the Government upon which he had a right to rely, or indeed, which can fairly be said to constitute false representations at all. Thus, the March 10, 1971, letter from the Toiyabe National Forest Supervisor to the appellant stated that "it appears to us" that

---

1/ As a practical matter, it was BLM and not appellant who suffered a limitation on its freedom of action during the pendency of the exchange application. Under 43 CFR 2091.2-3 and 2202.5, the filing of a valid formal exchange application "will segregate the selected public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws." In effect, while appellant remained totally free to recall his application, BLM was prohibited during its pendency from otherwise disposing of the selected lands.

certain described parcels were equivalent in value to the offered lands. But the letter goes on to state that after appellant's approval and that of the Clark County Planning Commission are obtained, "we will request the Bureau of Land Management to classify the lands for the exchange." Classification of lands as suitable for private exchange does not mean that the exchange has been approved, but is merely an indication that there is no bar to the further consideration of the exchange. Indeed, the applicable regulation, 43 CFR 2201.1, states: "No preliminary negotiations will be conducted, and no application will be accepted for lands administered by the Bureau of Land Management which have not been classified as proper for disposal by exchange." Moreover, the May 6, 1971, letter from the Forest Supervisor to appellant clearly described the procedures which were required to be followed:

> The Las Vegas office of the Bureau of Land Management has also been informed of your selections. They are holding the lands for your exchange pending an approved appraisal from us. Because of the values involved, our appraisal must be reviewed and approved by our Regional Office in Ogden, Utah, and our Washington Office, before it is forwarded to the Bureau of Land Management.
>
> After the Bureau of Land Management receives our appraisal, it must be reviewed and approved by their district, state, and Washington offices. If they approve the exchange, you will be notified as to the steps required in consumating [sic] the case. [Emphasis supplied.]

None of the elements of laches are remotely disclosed in this appeal.

Appellant makes much of what he considers to be various errors below, and he does, in point of fact, point out a number of inconsistencies in the appraisal. But the reality of appellant's position can clearly be seen by the relief requested. He does not seek a new appraisal based on present value, accurately computed. Rather, he requests that the original appraisal be used as the basis for the exchange. Was the original appraisal accurate? There is no evidence that it was. Indeed, appellant's private appraisal resulted in valuations averaging 59 percent above the original appraisal's valuations of the offered and selected lands.

The essential difficulty with appellant's requested relief is that exchanges are consummated as a present fact, and thus, the equivalency in value must be a present reality. 2/ This is implicit

---

2/ In this regard, I doubt that appellant would be arguing the existence of binding contractual obligations if the land situation were reversed, i.e., the offered lands had undergone a rapid price appreciation while at

in 43 CFR 2204.2-2 which states that "Changes in values, after publication of the notice required by § 2203.6 will ordinarily not be a basis for rejection of an application, all other factors being equal." (Emphasis supplied.) Needless to say, no such publication has occurred herein

It is clear, as the majority points out, that none of the old appraisals may serve as a basis for the exchange. Accordingly, the grant of a fact-finding hearing to delineate specific mistakes in the past appraisals would be an exercise in futility. Even if it could be shown that substantial errors had occurred in past valuations, the administrative delay engendered by such a mistake would not alter the requirement that the Government receive full value for its land, and a new corrected appraisal at present values would be a prerequisite to the exchange. See Willcoxson v. United States, 313 F.2d 884, 888 (D.C. Cir. 1963), cert. denied,
373 U.S. 932 (1963); George D. Jackson, 20 IBLA 253, 256 (1975); Eugene G. Roguska, 15 IBLA 1, 6-9 (1974).

This case is functionally different from the past Board decision cited by appellant, Michael S. Deering, 33 IBLA 142 (1977). The Deering case involved the assessment of annual rental under a special land use permit. Therein, the Board remanded the case for resolution of discrepancies between a BLM appraisal and one provided by the appellant. But that case, by its very nature, involved the computation of rent for a specific period of time. Valuation, being circumscribed by definite temporal parameters, could be properly made years subsequent to the period at issue, since the only relevant question would be the proper rental assessment for those specific years. The instant matter is totally different. It must, by its nature, always involve present valuations, since no transaction has yet occurred. The principle of the Deering case is simply without relevance herein. 3/

Finally, I think some reference should be made to appellant's request that this Board order BLM to respond to 75 interrogatories posed by appellant. It is difficult to read the interrogatories as

---

fn. 2 (continued)
the same time the value of the selected lands had remained relatively static. Similarly, were the proposed land exchange a matter of negotiations between two private parties, appellant would scarcely complain of his right to the exchange. In actual fact, however, appellant has no right to an exchange, and the Government is in precisely the same position as a private party. It has the right to consummate the exchange or reject it, as it sees fit. See 43 CFR 2204.2-1.

3/ A core difficulty with appellant's argument relating to publication of appraisal criteria is that all that the applicable standards require is that the Government receive "fair market value." While the specific fair market value in a particular case may be a matter of some dispute, the

anything more than a thinly disquised attempt to harass BLM. Not only do they fundamentally constitute a fishing expedition, but they embrace questions as transparently irrelevant as requiring BLM to state why the Forest Service approved or disapproved of its own appraisals (Nos. 5 and 6), and requiring BLM to state for the past 10 years the total number of exchange applications filed, completed, rejected, or discontinued in the entire United States (No. 45 a-d). Even were this Board disposed in an individual case to authorize the submission of interrogatories between the parties, I doubt that it would ever countenance the submission of such a package of irrelevancies.

Thus, I concur fully in the majority disposition of the instant appeal.

James L. Burski
Administrative Judge

fn. 3 (continued)
concept itself is not so arcane as to require a regulation explaining it. One might as well argue that the Government is required in every instance where a regulation implies a mathematical calculation to expressly state that the arabic numbering system on a base ten will be utilized to compute the result.

As the majority notes, this Board has consistently stated that the appraisal standards and methods found in the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Interagency Land Acquisition Conference, are the relevant guide for appraisals within the Department. See American Telephone and Telegraph Co., 25 IBLA 341 (1976); 602 Departmental Manual 1.3, published April 18, 1972. Appellant's objection is correctly rejected.